

Congress of the United States
Washington, DC 20515

October 22, 2020

Honorable Alex M. Azar II
Secretary of Health and Human Services
200 Independence Ave S.W.
Washington, D.C. 20301-0004

Dear Secretary Azar,

We write to express our strong objections to your department's proposed rule to eliminate nondiscrimination provisions for organizations that receive grant funding from the Department of Health and Human Services (HHS). If adopted, this rule would permit taxpayer-funded discrimination against marginalized communities in an array of critical services. In addition to this proposal's insidious affects, we firmly believe your department must reexamine this proposal in light of *Bostock v. Clayton County* which affirmed that the ban on discrimination "because of sex" in Title VII of the Civil Rights Act of 1964 protects LGBTQ employees against workplace discrimination.

If finalized, this proposed rule would eliminate nondiscrimination provisions that explicitly prohibit organizations that receive HHS grant funding from discriminating against our nation's most marginalized communities, including LGBTQ people, same-sex couples, women, and people of minority faiths. This proposed rule would potentially license recipients of HHS grants to conduct taxpayer-funded discrimination in administering a wide range of health and social services. Unconscionably, under this rule vulnerable Americans would be denied an array of taxpayer-funded services such as health care, refugee resettlement, after school programming, elder care programs, community meal programs, and adoption and foster care services, simply for who they are.

Your Department's issuance of this rule has raised significant legal concerns since its inception. These concerns have since grown due to the Supreme Court's decision in *Bostock v. Clayton* which ruled Title VII's prohibition of discrimination on the basis of sex in employment includes discrimination against LGBTQ people. This rule would grant discrimination protections only "to the extent doing so is prohibited by federal statute" and eliminate the existing protections that prohibit discrimination on the basis of "age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation." Currently, many statutes administered by HHS fail to expressly protect all of the groups covered under the existing rule. The ruling in *Bostock v. Clayton* has major implications for access to health care and social services the Department must consider in administering its programs.

Each year, HHS awards more than \$500 billion in grant funding for important services, accounting for more than one-fourth of all federal spending. Unfortunately, this rule would curtail these services for millions of Americans. If adopted, more foster youth will age out of the system without a permanent placement, a gay person living with HIV could be denied lifesaving services, a Jewish person could be rejected from adopting on the basis of their religion, a single

woman could be denied supportive services for her child, a homeless transgender person could be denied homeless services, and much more. This rule would put the health of millions at risk and is antithetical to HHS' role of ensuring the health and well-being of all Americans.

We demand you to withdraw this harmful rule and, at the very least, reexamine it in light of *Bostock v. Clayton*. In addition, we are frustrated by your department's failure to respond to previous communications and its implications on congressional oversight, and respectfully ask you to respond by no later than November 1, 2020. We look forward to your response.

Sincerely,

/s/

Joseph P. Kennedy, III
Member of Congress

/s/

David N. Cicilline
Member of Congress

/s/

Sean Patrick Maloney
Member of Congress

/s/

Mark Pocan
Member of Congress

/s/

Mark Takano
Member of Congress

/s/

Angie Craig
Member of Congress

/s/

Sharice L. Davids
Member of Congress

Chris Pappas
Member of Congress